

Error Rebuttal

1. Alleged Error – Correctness of 102 Rejections

The QR reviewer alleges that the examiner's rejection under 102 of claims 6,12,19 and 36 is incorrect because the **Kuervers** reference (US 4,938,477) fails to teach that the pad 25 is compressible, and therefore cannot anticipate these claims. The reviewer elaborates that while pads 22 are disclosed as being formed from foam, one could fairly infer that it would be obvious that pad 25 could also be formed from foam.

However, claims 6,12,19 and 26 only require a "compressible layer". The examiner has stated that pad 25 of Kuervers is compressible. **The American Heritage Dictionary, Second College Edition**, defines "pad" as "A thin, cushionlike mass of soft material used as filling or for protection against jarring, scraping, or other injury." Thus, it is clear that the term "pad" as used by Kuervers to define element 25 is clearly "compressible" as required by the claims in question.

2. Alleged Error – Correctness of 102 Rejections

The QR reviewer also alleges that the Kuervers reference does not teach the method steps of pressing the user's body against the pad or compressible layer as recited in method claims 36-38 and 40.

However, it is clear that the mere attachment of the device to a user's wrist, will result in some "compression" of the pads of Kuervers, especially when the device is closed around the wrist and clasped shut. The Kuervers device is designed to fit snugly, and although the reviewer cites the Kuervers disclosure that the device is designed to fit without pressuring the arteries and veins, some compression of the pads is inherent by the wrist, not to mention any further compression resulting from making a fist (and flexing of the muscles in the wrist area). Also, mere use of the device through exercising movements would result in some compression of the pads by the wrist.

3. Alleged Error – Clarity of 102 Rejections

The QR reviewer alleges that the office action omitted claim 39 (see paragraph 23) although the claim was clearly intended to be included in the 102 rejection over Evans.

It appears that there was a typo in paragraph 23, and claim 39 was misidentified as claim 38. This should not be held as "clear error".

The QR reviewer also alleges that the examiner rejected claim 39 under 102(b) over Evans by saying that Evans discloses pressing the user's arm against the first surface, whereas Evans discloses pressing the leg against the first surface.

This also appears to be a typo in the examiner's action, as the word "arm" should be --leg-- in line 3 of paragraph 28 of the action. This should not be held as a clear error.

4. Alleged Error – Correctness Of 103 Rejections

The QR reviewer alleges that the 103 rejections are not correct because the 102 rejection over Kuervers is incorrect.

There should be no error here, because the 102 rejection over Kuervers is in fact correct.



NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700